

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

AARON A. EDISON,

Plaintiff,

v.

Civ. Action No. 1:18-cv-196
(Kleeh)

STATE OF WEST VIRGINIA,
Department of Health and Human
Resources, Bureau of Child Support
Enforcement, and
MICHELLE UVONNE EDISON,

Defendants.

MEMORANDUM OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION
[ECF NO. 43] AND GRANTING MOTION TO DISMISS [ECF NO. 20]

Pending before the Court is a Report and Recommendation ("R&R") from United States Magistrate Judge Michael J. Aloï, recommending that the Court dismiss this action with prejudice. For the reasons discussed below, the Court adopts the R&R.

On October 17, 2018, the pro se Plaintiff, Aaron A. Edison ("Plaintiff"), filed a *Petition Seeking Appeal and Relief for Constitutional Rights Violations*. ECF No. 1. Plaintiff argues that his constitutional rights have been violated by the State of West Virginia. Specifically, Plaintiff believes that a state court's decision to suspend his driver's license due to child support arrearages was unconstitutional, as was the resulting harassment he suffered. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to Judge Aloï for initial review.

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On February 1, 2019, the State of West Virginia, Department of Health and Human Resources and Bureau of Child Support Enforcement (the "State"), moved to dismiss the Petition for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In support of its motion, the State argues that absent a waiver, it cannot be sued in federal court. Plaintiff filed a response to the motion, in which he argues that the State may be sued if it is acting in violation of the Constitution of the United States.¹ The State then filed a Reply, in which it reiterates its position and notes that Plaintiff did not rebut it. Plaintiff then filed a surreply, styled as a Reply, in which he also reiterates his own position.²

On April 16, 2019, Judge Aloï entered an order giving notice to the parties that he intended to issue a R&R recommending dismissal of this action in its entirety as to all defendants. ECF No. 36. Judge Aloï directed the parties to respond within 21 days "with any supplemental information or amendments to the present

¹ Within his Response, Plaintiff writes, "If this court so chooses this Plaintiff would request that the individual names of Alan D. Moats, Beth Longo and Susan Wilmerink be added as defendants (in their individual capacities)." ECF No. 29 at 3.

² The State moved to strike Plaintiff's surreply because Plaintiff did not seek leave of the Court before doing so, as is required under the Local Rules. ECF No. 33. Plaintiff requested that the Court allow the surreply. ECF No. 34. The State responded in opposition to this request. ECF No. 35.

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filings to demonstrate why this action should not be dismissed" against all defendants and proposed defendants. Plaintiff moved for an extension of time to respond, and Judge Aloï granted the motion. See ECF Nos. 39, 40. To date, no supplemental information or amendments have been filed.

On July 19, 2019, Judge Aloï entered an R&R recommending dismissal of this action. ECF No. 43. Specifically, he believes the case should be dismissed based on the State's sovereign immunity from suit under the Eleventh Amendment to the United States Constitution. Even if this Court finds that sovereign immunity does not apply, Judge Aloï recommends dismissal based on lack of subject matter jurisdiction under the Rooker-Feldman doctrine. Judge Aloï also recommends that the Court deny the Motion to Amend/Correct as futile, that the Court dismiss sue sponte the claims against Michelle Uvonne Edison, and that the Court deny as moot the Motion to Strike.

The R&R informed the parties that they had 14 days to file "specific written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." Further, Judge Aloï noted in the R&R that "[f]ailure to timely file written objections to the Report and Recommendation . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the

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Circuit Court of Appeals." The docket indicates that Plaintiff received the R&R on August 3, 2019. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the [parties do] not object." Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review of the R&R, the Court **ORDERS** the following:

- (1) the R&R is **ADOPTED** [ECF No. 43] for reasons more fully stated therein;
- (2) the Motion to Dismiss is **GRANTED** [ECF No. 20];
- (3) the Motion to Amend/Correct Complaint is **DENIED** [ECF No. 30];
- (4) the Motion to Strike is **DENIED AS MOOT** [ECF No. 33]; and

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(5) this action is **DISMISSED WITH PREJUDICE**
and **STRICKEN** from the Court's active
docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to
counsel of record and to the pro se Plaintiff, via certified mail,
return receipt requested.

DATED: August 28, 2019



THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE